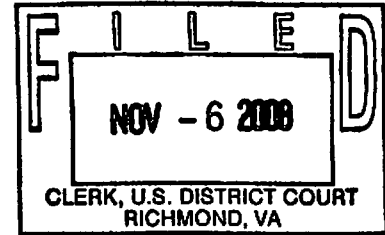


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**



**TIMOTHY BARNARD,**

Plaintiff,

v.

Civil Action No. **3:07CV566**

**ANDREW JOHNSON, *et al.*,**

Defendants.

**MEMORANDUM OPINION**

Plaintiff, a Virginia prisoner, filed this 42 U.S.C. § 1983 action through counsel. On June 19, 2008, the Court entered a pretrial order setting this action for jury trial on November 19, 2008. Five (5) motions are currently pending: Plaintiff's motion to dismiss Defendant Christopher Williams (Docket No. 59), Plaintiff's motion for default judgment as to Defendants Jackson, Davis, Johnson, and Whitehead, and for damages hearing (Docket No. 61), Plaintiff's motion for writ of habeas corpus *ad testificandum* (Docket No. 63), motion for hearing in penal institution pursuant to Local Rule 83.4(D) (Docket No. 65), and motion to continue the trial (Docket No. 67).

**I. Plaintiff's Motion to Dismiss Defendant Williams**

Federal Rule of Civil Procedure 41(a)(2) authorizes voluntary dismissal by a plaintiff "on terms that the court considers proper." Upon review, the Court concludes that Defendant Williams's legal rights will not be unfairly prejudiced by his dismissal from this action without prejudice. *See Davis v. USX Corp.*, 819 F.3d 1270, 1273 (4th Cir. 1987). Plaintiff's motion to dismiss Defendant Williams (Docket No. 59) will be GRANTED without prejudice to Plaintiff's right to collect the sanctions imposed by the Court's Memorandum Order of October 7, 2008.

## **II. Plaintiff's Motion for Default Judgment**

Defendants Jackson, Davis, Johnson, and Whitehead ("the Defendants") are the sole remaining defendants in this action. On July 28, 2008, the Clerk entered their default. *See* Fed. R. Civ. P. 55(a). To date, the Defendants have not filed an answer or otherwise responded to the complaint. Entry of default judgment would normally be proper. Because Plaintiff is a prisoner, however, Defendants are not required to answer unless ordered by the Court. 42 U.S.C. § 1997e(g). Because the Court finds that Plaintiff has a reasonable likelihood of success on the merits, *see* 42 U.S.C. § 1997e(g)(2), Defendants are hereby ORDERED to respond to Plaintiff's complaint within five (5) days of the date of entry hereof. Failure to respond will be treated as an admission of the truth of the allegations contained therein.

Plaintiff's remaining motions will be addressed after the Court rules on Plaintiff's motion for default judgment.

An appropriate Order shall enter.

/s/  
**Richard L. Williams**  
**United States District Judge**

**NOV - 6 2008**  
Date: \_\_\_\_\_  
Richmond, Virginia